*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+ WRIT PETITION NO. 9324 OF 1997

% 18.02.2005

M/S. NORTH COASTAL WINE DISRIBUTORS, REPRESENTED BY ITS MANAGING PARTNER, SRI P. SEETHARAMAYYA.

..PETITIONER.

Vs.

$ 1. THE COMMISSIONER OF PROHIBITION, GOVERNMENT OF ANDHRA PRADESH, HYDERABAD AND ANOTHER.

..RESPONDENTS.

<GIST

>HEAD NOTE:

!COUNSEL FOR THE PETITIONER: SRI G. SUDHAKAR.

^COUNSEL FOR RESPONDENT NOS. 1 & 2: GP FOR PROHIBITION & EXCISE.

?CASES REFERRED:

NIL.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9324 of 1997

Between:

M/s North Coastal Wine Distributors, Rep. by its Managing Partner, Sri P. Seetharamayya S/o. Ramaswamy 15-12-3, Berichavidi Street, Vizianagaram.

..... PETITIONER

AND

1. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh., Hyderabad.
2. The Asst. Commissioner of Prohibition and Excise, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or direction, preferably a Writ in the nature of Mandamus declaring the action of the respondents in calling upon the petitioner to pay penal interest in terms of the proceedings of the second respondent made in Letter No. 664/91/A2, dated 27-3-1997, as illegal, contrary to law and consequently direct the respondents not to levy or collect the penal interest in respect of the differential duty already paid by the petitioner pursuant to the enhancement made.

Counsel for the Petitioner:MR. G. SUDHAKAR.

Counsel for the Respondent Nos.1&2: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER;

M/s. North Coastal Wine Distributors, Vizianagaram, represented by its Managing Partner-the writ petitioner had invoked the jurisdiction of this Court under Article 226 of the Constitution of India praying for an issuance of appropriate writ, order or direction, preferably a writ in the nature of mandamus declaring the action of the respondents in calling upon the petitioner to pay penal interest in terms of the proceedings of the second respondent made in Letter No.664/91/A2, dated 27-3-1997 as illegal, contrary to law and consequently direct the respondents not to levy or collect the penal interest in respect of the differential duty already paid by the petitioner pursuant to the enhancement made and pass such other suitable orders.

2. The impugned order made by the Assistant Commissioner, Prohibition and Excise, Vizianagaram reads as under:

> "You, M/s North Coastal Wine Distributors, Vizianagaram, have made late payment in respect of the difference of excise duty on account of enhancement from Rs.45/- to Rs.70/- per proof litre on I.M.F.L. with effect from 8-2-1991. The penalty payable by you for late payment of the said amount comes to Rs.1,49,162/-. When you were asked to pay the said penalty amount, you have deposited an amount of Rs.28,450/- in the Government Treasury vide Challan No.2953 dated 27-2-1997 being a part payment.
>
> Vide Reference 3 cited above, you have requested the Excise Department to reduce the demand originally made i.e., from Rs.1,49,162-00 to Rs.85,348-54 ps. It is brought to your notice that on considering your request and as per the Excise Rules, there is no possibility of reducing the penalty amount. As such you are still due an amount of Rs.1,20,712/- (Rs.one lakh twenty thousand seven hundred and twelve only)".

3. Sri G. Sudhakar, learned counsel representing the writ petitioner had taken this Court through the respective pleadings of the parties and would contend that from the counter-affidavit, it is not clear under what authority the impugned order had

been issued. The learned counsel also had drawn the attention of this Court to the provisions of the Andhra Pradesh Excise Act, 1968 (For short, herein after referred to as 'the Act' for the purpose of convenience) and would contend that at any rate, this claim made by the impugned order would not fall under Excise Revenue and hence, the said demand cannot be made either under Section 65 of the Act or under Rule 3 of the Andhra Pradesh Excise (Levy of Interest on Government Dues) Rules, 1982 (For short, herein after referred to as 'the Rules' for the purpose of convenience).

4. Per contra, the learned Government Pleader for Excise had taken this Court through the contents of the counter-affidavit and had placed a strong reliance on Section 2 (12) of the Act and also Section 65(3) of the Act read along with Rule 3 of the Rules referred to supra. The learned counsel also would contend that the competency of the authority, who had imposed this penal interest cannot be any doubt whatsoever though the impugned order is not happily worded. The learned counsel would contend that when power is clear, the mere fact that certain aspects had not been specified in the impugned order, may not alter the situation and hence, the writ petition is liable to be dismissed.

5. The writ petitioner, a Firm was dealing in wholesale wine distribution and having F.L.27 licence bearing No.142/87 to 92, which was issued to the petitioner on 14-5-1990 when there was no prohibition in the State of Andhra Pradesh, and up to the date of bringing prohibition in the State of Andhra Pradesh, the petitioner used to purchase and received Indian Made Foreign Liiquor stocks not only from within the State of Andhra Pradesh but also outside the State. The petitioner used to bring the stocks depending upon its need after applying for necessary transport and import permits. It is stated that the petitioner, before the month of May, 1991, placed an order for stocks from outside the State of Andhra Pradesh and by the time the said stocks reached the State of Andhra Pradesh, by virtue of G.O.Ms.No.96 dated 8-2-1991 , the Government of Andhra Pradesh increased the Excise Duty from Rs.45/-per litre of the strength of proof spirit to Rs.70/-per litre of the strength of proof spirit. Since the order was placed before the said date and when the petitioner was called upon to pay differential duty, several writ petitions were filed questioning the same. Even, the present writ petitioner filed W.P.No.5423 of 1991. The Division Bench of this Court heard batch of writ petitions and by a common judgment dated 8-11-1991 allowed certain writ petitions and dismissed certain writ petitions. However, the writ petition filed by the present writ petitioner was dismissed. It is also stated that the

petitioner paid the differential amount as per the said Notification. The 2nd respondent called upon the petitioner to pay penal interest for the delayed payment of differential Excise Duty amounting to Rs.1,49,124/- and out of the said amount, the petitioner paid a sum of Rs.28,450/- which had been duly acknowledged. The 2nd respondent by two notices dated 27-3-1997 called upon the petitioner to pay Rs.1,20,712/- as being the penal interest. The Excise Duty as defined under Section 2(10) of the Act, as well as the duty and counterveiling duty as defined under Section 21 and 22 of the Act would make this position clear. It is further stated that it is only with regard to the Excise Revenue, there can be revenue of penal interest and the same is also evident on a reading of the Rules, 1982, which was published vide G.O.Ms.No.1545 Revenue (T) dated 23-10-1982. The said G.O. is applicable only to Arrack and Toddy Licences General Conditions Rules, 1969 and other Government monies due as stated under the Act. The specific stand taken is that the Excise Duty is different from Excise Revenue and hence, the impugned proceeding issued is without authority or jurisdiction since such demand cannot be made at all.

6. The respondents filed counter-affidavit wherein specific stand was taken that by virtue of Section 65 of the Act and Rule 3 of the Rules referred to supra, the impugned order making a demand for payment of penal interest had been made in accordance with law. Hence, the writ petition is liable to be dismissed.

7. Heard both the counsel.

8. The order impugned in the preset writ petition already had been referred to supra. The specific stand taken by the writ petitioner is that the respondents have no power or authority to levy the penal interest which had been specified in the impugned order.

9. The Act No.17 of 1968 of the Act is an Act to consolidate and amend the law relating to the production, manufacture, possession, transport, purchase and sale of intoxicating liquor and drugs, the levy of duties of excise and countervailing, duties on alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs and narcotics and to provide for matters connected therewith in the State of Andhra Pradesh.

10. Section 2 of the Act deals with definitions. Section 2(10) of the Act defines “excise duty” or “countervailing duty”.

In this Act, unless the context otherwise requires;

> "Excise duty" or "countervailing duty" means the duty of excise or countervailing duty, as the case may be, mentioned in Entry 51 in List II of the Seventh Schedule to the Constitution."

The 'excise revenue' is defined in Section 2(12) of the Act.

In this Act, unless the context otherwise requires;

> "excise revenue" means revenue derived or derivable from any duty, fee, tax, rent, fine, penalty or confiscation levied, imposed or ordered under the provisions of this Act or any other law for the time being in force relating to intoxicating liquors or intoxicating drugs."

Section 65 of the Act dealing with Recovery of Government due reads as hereunder:

"(1) The following moneys, namely:

a. all excise revenue:

b. any loss that may accrue when, in consequence of default, a lease under Section 17 has been taken under management by the Collector, or has been resold by him;

c. amounts due to the Government by any person on account of any contract relating to the excise revenue; and

d. the costs, charges and expenses(including the salaries and allowances of the (Prohibition and Excise officers) specified in sub-section(2) of Section 28

> may be recovered from the person primarily liable to pay the same or from his surety, as if they were arrears of land revenue.
>
> (2) When a lease has been taken under management by the Collector, or has been re-cold by him, the Collector may recover, in the manner authorized by sub-section (1) any money due to the defaulter by any lessee or assignee.
>
> (3) Arrears of moneys recoverable under this section shall bear interest (at such rate as may be prescribed)".

The Andhra Pradesh Excise (Levy of Interest on Government Dues) Rules, 1982, G.O.Ms.No.1545, Revenue (T), Dated 23-10-1982 were made in exercise of powers conferred by Section 72 read with sub-section (3) of Section 65 of the Andhra Pradesh Excise Act, 1968 (Act 17 of 1968). Rule 3 dealing with Interest, reads as under:

> "The arrears of moneys recoverable under Section 65 of the Act shall bear at the rate of (eighteen) percent per annum."

11. In the light of Rule 3 of the Rules r/w Section 65(3) of the Act, there cannot be any doubt whatsoever that the penal interest can be levied for the delayed payment. From the facts, which had been narrated above, it is clear that the writ petitioner made the payment only after the dismissal of the writ petition. Further, specific stand had been taken by the writ petitioner that part of the payment already had been made.

12. In the light of the aforesaid facts, though the impugned order as such is not happily worded, there cannot be any doubt whatsoever about the competency or power of the authority, who made the impugned order.

13. Hence, the writ petition is devoid of merit and accordingly the same shall stand dismissed. But, however, in the facts and circumstances of the case, the parties to bear their own costs.

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18-02-2005

To

1. One fair copy to the Honourable Mr. Justice P.S.Narayana (For His Lordships kind perusal).

2. The Commissioner of Prohibition and Excise, Government of Andhra Pradesh., Hyderabad.

3. The Asst. Commissioner of Prohibition and Excise, Vizianagaram.

4. Two CCs to the Government Pleader for Prohibition & Excise, Government of Andhra Pradesh, Hyderabad. (OUT)

5. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

7. 8 L.R. copies.

8. Two C.D. copies.

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